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HOUSE BILL 769

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Al Park

AN ACT

RELATING TO LONG-TERM CARE; AMENDING SECTIONS OF THE LONG-TERM CARE OMBUDSMAN ACT PERTAINING TO ACCESS TO RECORDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 28-17-13 NMSA 1978 (being Laws 1989, Chapter 208, Section 13, as amended) is amended to read:

"28-17-13. ACCESS TO RECORDS OF PATIENTS, RESIDENTS OR CLIENTS. --

A. In order for the office to carry out its responsibilities, including conducting investigations, under the Long-Term Care Ombudsman Act, the office shall have access to the medical, [~~and~~] personal and financial and other nonmedical records of a patient, resident or client of a long-term care facility that are retained by the facility or the facility's parent corporation or owner. If the patient,

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1 resident or client:

2 (1) has the ability to consent in writing,  
3 access may only be obtained by the written consent of the  
4 patient, resident or client;

5 (2) is unable to consent in writing, oral  
6 consent may be given in the presence of a third party as  
7 witness;

8 (3) has a legally appointed surrogate decision  
9 maker authorized to approve review of records, the office shall  
10 obtain the permission of the surrogate decision maker for  
11 review of the records, unless any of the following apply:

12 (a) the existence of the surrogate  
13 decision maker is unknown to the office or the facility;

14 (b) the surrogate decision maker cannot  
15 be reached within five working days; [~~or~~]

16 (c) access to the records is necessary  
17 to identify, investigate or evaluate a complaint; [~~and~~] or

18 (d) the surrogate decision maker refuses  
19 to give the permission and a representative of the office has  
20 reasonable cause to believe that the surrogate decision maker  
21 is not following the wishes of the resident; and

22 (4) is unable to express written or oral  
23 consent and there is no surrogate decision maker or the  
24 notification of the surrogate decision maker is not applicable  
25 for reasons set forth in Paragraph (3) of this subsection or

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1 the patient, resident or client is deceased, inspection of  
2 records may be made by employees of the office, ombudsman  
3 coordinators and by ombudsmen approved by the ombudsman  
4 coordinator or the state ombudsman.

5 B. The office shall also have full and immediate  
6 access to any administrative records, policies, procedures or  
7 documents that concern, involve or pertain to a resident's  
8 diet, comfort, health, safety or welfare.

9 [~~B.-~~] C. Copies of records may be reproduced by the  
10 office. If investigation of records is sought pursuant to this  
11 section, the ombudsman shall upon request produce a statement  
12 signed by the ombudsman coordinator or state ombudsman  
13 authorizing the ombudsman to review the records. Facilities  
14 providing copies of records pursuant to this section may charge  
15 the office for the actual copying cost for each page copied.

16 [~~C.-~~] D. Upon request by the office, a long-term  
17 care facility shall provide to the office the name, address and  
18 telephone number of the guardian, conservator,  
19 attorney-in-fact, legal representative or next-of-kin of any  
20 patient, resident or client and a copy of any document granting  
21 legal decision-making power over a resident.

22 [~~D.-~~] E. The long-term care facility and personnel  
23 who disclose records pursuant to this section shall not be  
24 liable for the disclosure.

25 [~~E.-~~] F. The office shall establish procedures to

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1 protect the confidentiality of records obtained pursuant to  
2 this section. "

3 Section 2. Section 28-17-14 NMSA 1978 (being Laws 1989,  
4 Chapter 208, Section 14, as amended) is amended to read:

5 "28-17-14. CONFIDENTIALITY OF INFORMATION. --

6 A. The files and records of the office may be  
7 disclosed only for purposes of fulfilling the duties of the  
8 office [~~of the ombudsman~~] pursuant to Subsection C of Section  
9 28-17-4 NMSA 1978 at the discretion of the state ombudsman or  
10 [~~person designated by him~~] the state ombudsman's designee. All  
11 state ombudsman files and records pertaining to clients,  
12 patients and residents are confidential and not subject to the  
13 provisions of the Inspection of Public Records Act. The state  
14 ombudsman shall not disclose the identity of any complainant,  
15 [~~or~~] resident, client or patient about whom the office  
16 maintains files or records unless:

17 (1) the complainant, [~~or~~] resident, client or  
18 patient or [~~his~~] the legal representative of that person  
19 consents in writing to the disclosure;

20 (2) the complainant, [~~or~~] resident, client or  
21 patient gives oral consent that is documented immediately in  
22 writing by a representative of the office;

23 (3) disclosure is necessary for the provision  
24 of ombudsman services to the patient, resident or client and  
25 the patient, resident or client is unable to express written or

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1 oral consent; or

2 (4) disclosure is ordered by the court.

3 B. The director shall have access to the records  
4 and files of the office to verify the effectiveness and quality  
5 of the [ombudsman] program where the identity of any  
6 complainant, witness, patient, resident or client is not  
7 disclosed. "

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